



A fine line

Infrastructure development and eco-conservation should go hand-in-hand

The need for infrastructure development in the Himalayan region rubs up against the environmental and ecological challenges that they pose. The Uttarakhand government has for decades envisaged hydroelectric projects as the way forward to power the State, premised on the region's undulating topography. However, the rising frequency of intense rains has been contributing to landslides, avalanches, and the loss of lives and property. All of this has a bearing on hydroelectric projects being situated in terrain prone to environmental shocks. In the aftermath of the devastating Kedarnath floods of 2013, the Supreme Court ordered a halt to hydroprojects in the Alaknanda and Bhagirathi river basins pending a review on whether they exacerbated the damage. The last few years have seen considerable friction on this issue, especially because the future of hydroprojects is closely linked to the National Mission for Clean Ganga (NMCG) programme. For the health of the river, it must be allowed to flow unimpeded, and hydropower projects are an obstacle. A committee of experts recommended to the Court that almost all hydropower projects, cleared by the Government for construction, be scrapped. Proponents of six of these projects approached the Court on the grounds that they had obtained prior clearances and scrapping projects would entail significant losses. Since then, the Centre has been trying to walk a fine line between salvaging some of them while acknowledging, at least on paper, the environmental costs.

There have been divisions even within various Central ministries: the Water Resources Ministry, which manages the NMCG, is opposed to hydropower projects while the Ministry of Power roots for them. Through the years, whenever a group of experts has recommended a cessation of infrastructure development, there is always another group of experts, usually affiliated to government institutions, that differ and recommend the opposite. The avalanche in Chamoli this February, that destroyed two power projects and killed at least 200, was only the latest reminder of the fraught risks that committees and their tussles inadequately account for. The Centre has been saying that it is not too keen on new hydropower projects and is only permitting those that are at least 50% complete to go ahead given the sunk costs. While such statements have been made in Parliament, they do not appear in the latest affidavit to the Court; so there are concerns on whether this is indeed a lasting policy commitment. Uttarakhand, like all other States, is not immune from the demands for reliable power and infrastructure from its people. Along with better dialogue, power companies and the Centre must inspire greater trust in the residents of the region: infrastructure development will have to necessarily account for the region's constraints.

Rape and insensitivity

Women's security must not be predicated on restrictions of their rights and freedoms

The narrative of violence against women in India continues unhindered. On August 24, an MBA student was gangraped near Chamundi Hills in Mysuru, sending shock waves around the country. Four men and a juvenile have been arrested from Tiruppur in Tamil Nadu in connection with the rape. The men tried to rob the girl and her friend but on finding no valuables, they raped her and assaulted him. Earlier this month, a minor Dalit girl was raped, murdered and hurriedly cremated in Delhi while the parents were kept away. In July, two minor girls were raped in Goa. Despite stringent laws in place, especially after the 2012 Nirbhaya case in Delhi, a rape occurs every 16 minutes in India, according to the latest records available with the National Crime Records Bureau. To make matters worse, sexist, misogynist, survivor-blaming remarks and inept measures invariably follow a heinous crime against women. Girls are pulled up for wearing ripped jeans, and staying out late. Sections of society, in their warped thinking, often argue the survivor could have evaded the assailants by adhering to conservative norms: wearing traditional attire, skipping parties, returning home by sunset. Parents are blamed for not bringing up their girl children with 'Indian values'. After the Mysuru rape, a similar pattern ensued. The Karnataka Home Minister, Araga Jnanendra, 'joked' about rape while accusing the Congress of 'politicising' it. He subsequently retracted his insensitive remarks after State Chief Minister Basavaraj Bommai stepped in.

Mysore University did a flip-flop too, first announcing that girls would not be allowed to step off the Manasagangotri campus after 6.30 p.m., and then withdrawing the missive. Activists cried foul because the action showed the intent to blame everything on the girl. To do right by women, courts too should play a role, but despite some soul-searching as in *Aparna Bhat & Ors vs. State of Madhya Pradesh & Anr.*, where the Supreme Court admitted to the "entrenched paternalistic and misogynistic attitudes that are regrettably reflected at times in judicial orders and judgments," other verdicts have fallen short. Recent rulings by the Chhattisgarh High Court and the Kerala High Court, reiterating that any sexual act by a man against his wife, even if it involved force, is not rape, may be correct in law, but served to highlight the lacuna in the penal code, which does not recognise marital rape. In June, the Supreme Court had to order police protection to a couple in a live-in relationship who were denied relief by the Punjab and Haryana High Court. Women have come a long way, fighting for their rights against patriarchal mindsets and other social ills. Instead of curbing their freedom, society and the state must ensure protection of women both in public and private places.

The Afghan theatre and judging India's responses

Closing the embassy in Kabul does not fall among the questionable decisions in the country's foreign policy stance



C.R. GHAREKHAN

The Government's decision to pull out all staff from the Indian Embassy in Kabul, Afghanistan, including the Ambassador, has come in for much adverse comment among analysts and experts. It is argued that all major powers, including China, Russia and Iran, have maintained their missions. We would have been of much better help to our citizens and others had we remained there instead of packing our bags and leaving in such haste. At the least, it is said, we ought to have had a consular office at the airport, such as the one said to have been kept by the Americans. Some have even stated that the Taliban had requested India to maintain its embassy, meaning thereby that they had assured us of safety. This is a brief summary of the views of those critical of the Government.

Where India stands

This writer has no means of verifying whether or not the Taliban had made such an approach to the Government and would not like to second-guess its decision. But it seems to me, that on balance, the

Government was justified in taking the decision that it did.

First, India is not a major power, particularly when it comes to Afghanistan. We have not followed an independent or national interest-based policy towards the events in that country. This is true also of the previous Government. We have let the Americans decide our actions. To reiterate, we have never been a major player in Afghanistan. All we did was to support whatever government was installed in Kabul by the United States, first that of Hamid Karzai, and then Ashraf Ghani.

Putting all the eggs in the Ghani basket was wrong. He might have been a good academic and authority on developing countries, but he was not a statesman or a good administrator, besides being corrupt and tolerating corruption on a massive scale. Also, he was not a free agent, having to do America's bidding all the time. We poured money — \$3 billion worth — in small and medium projects across the country, which has undoubtedly earned us goodwill among the people of Afghanistan. But that did not earn us any role in the political consultations or so-called reconciliation negotiations among the stakeholders.

Feelers to the Taliban

In other words, India has not been a relevant player in whatever mattered most in relation to Afghanis-



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tan.

Criticism of the Government for not engaging the Taliban, not establishing contacts with them, is fully justified. It is reported in the media that the Government did engage the Taliban of late; the Government has not denied this claim. However, if it did begin talking to the Taliban, it was too little, too late.

We should have been open about it and established contacts at the senior level of the Taliban. Other powers did — China, Russia and even Iran, a Shia-majority country openly talking to a Shia-hating Sunni terrorist group. Even America started talking, openly, without feeling in the least embarrassed, to the Taliban at the senior level; this is the terrorist group which is estimated to have killed 2,500 American military personnel since 2001.

We were obviously not wanting

to upset Ashraf Ghani. We could not talk to the Taliban because they refused to talk to the Government. As Ambassador Vivek Katju has argued, engaging does not imply endorsing. This was a serious lapse. We have to talk to people whom we may find distasteful to talk to, whether it is Pakistan, China or the Taliban.

Even if we had had skeleton staff for consular work, how would those needing consular help have approached them? Nobody wanted to risk going out, everybody was afraid of gun-toting Taliban fighters. Online help? That could be extended from anywhere. Now, the Government has even cancelled all the visas issued so far; not a convincing way to render consular assistance.

If the Taliban did give an assurance of safety and requested us not to close the embassy, how could we rely on their word? Did we, do we, have the means to force them to keep their word? The Americans have; they can still cause a huge amount of harm to the Taliban; they have assets on the ground to do so, and which they are not able to deploy fully to protect their people.

The other groups

And it is not just the Taliban. There are other groups in Afghanistan that are inimical to India — the Lashkar-e-Taiba, the Jaish-e-Mohammed, as well as the Islamic

State in Khorasan (ISK, or ISIS K). The Government had possibly intelligence about the threats posed by these groups. It is reported that they provided thousands of fighters to the Taliban in their jihad against foreign forces. They are a potent threat to us now, also perhaps to the Taliban as demonstrated by the horrific suicide bombing on August 26 which took the lives of at least 13 American military personnel and many more Afghans. Even if one of our citizens had been killed, there would have been an outcry.

Foreign policy approach

One can criticise the Government for some approaches it has followed in foreign policy, for example aligning so closely with America which has, in turn, caused the Russians to be unhappy with us and which has led them to move closer to our enemy, China. Giving such huge importance to the Quad (composed of the U.S., Australia, India, and Japan) is also a questionable decision; the Quad is an American manoeuvre to contain China; it is an unabashedly anti-China arrangement which perhaps we ought not to have embraced so enthusiastically. But closing the embassy in Kabul does not fall among the questionable decisions.

Chinmaya R. Gharekhan, Indian Foreign Service (retired)

Seize this opportunity to institutionalise accountability

The discourse on an indemnity waiver for COVID-19 vaccines is a hidden moment for India to act



VIRAG GUPTA & CHANDRAKANT LAHARIYA

The Drugs Controller General of India granted Emergency Use Authorisation (EUA) to the COVID-19 vaccines manufactured by Moderna and by Johnson & Johnson, in end June and early August 2021, respectively. In addition, India has an opportunity to receive 5 crore to 10 crore doses of Pfizer-BioNTech's mRNA-based vaccine, including through the COVAX mechanism co-led by the Coalition for Epidemic Preparedness Innovations (CEPI), Gavi and the World Health Organization, before the end of 2021.

What it covers

Despite granting EUA for two vaccines and a third (that of Pfizer-BioNTech) being eligible for approval, uncertainty on supply and availability remains. One of the primary reasons for this is the Indian government's indecision on requests for indemnity from these manufacturers. Indemnity translates to protection from legal proceedings and liabilities, against claims from people who may experience rare and serious Adverse Events Following Immunisation (AEFI).

COVID-19 vaccines are given EUA by the regulatory authorities after a thorough review of their safety and efficacy. However, even though vaccines meet safety parameters, as an immuno-biological substance, a vaccine can be associated with rare and serious AEFIs, some of which — such as vaccine-induced immune thrombotic thrombocytopenia (VITT) and Myocarditis — are known. Other

long-term impacts can only be known over a period of time.

There is a need for increased and sustained vaccine supply in India. The country's COVID-19 vaccination drive has been underperforming, and in the seven-and-a-half months since the drive was initiated, only 11% of the total population has been fully vaccinated, and 35.5% has received a single dose. A reason for this is the insufficient supply, which has consistently been less than the projected vaccine availability. The situation persists in spite of the certain regulatory modifications enacted by the Government to increase availability, including: fast track authorisation of COVID-19 vaccines approved by regulatory authorities in the United States, the United Kingdom, Japan and Europe, and those included in the World Health Organization (WHO) emergency use listing; waiving off requirements for bridging trials; and doing away with mandatory batch testing for vaccines manufactured abroad. Though these steps have led to the EUA of two additional vaccines, there is a lack of clarity on the definitive timeline on their availability in India. A key bottleneck is demand from manufacturers to grant indemnity. The core argument of the manufacturers is that they have been granted indemnity in their country of origin and have supplied vaccines to other countries only when granted indemnity. Vaccines under COVAX programme, further have an effective waiver of indemnity, through a separate mechanism that has been established.

The existing provisions

The idea of not granting indemnity is to hold vaccine manufacturers accountable. The manufacturers of the three vaccines currently being administered in India (Covishield, Covaxin, and Sputnik V) have not been granted indemnity.



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There seem to be two key thoughts that are delaying the Government's decision on indemnity. First, the supply from these manufacturers is likely to be a very small proportion of total vaccine availability in the country. Second, it is likely that once foreign manufacturers are granted indemnity, manufacturers currently supplying vaccines might make similar demands citing the fair play rule.

What do the existing rules and regulations suggest? The rules governing clinical trials in India specify that compensation must be granted in case of injury or death of a trial subject. However, though a similar compensation mechanism does not exist for AEFIs reported under the Government's routine immunisation programme in the country or for any other vaccine-related injury; the legal responsibility for any vaccine-related injury, in the existing Indian regulations, lies with the manufacturers. Therefore, if manufacturers are granted indemnity for any COVID-19 vaccine, there has to be an alternative mechanism for people to make a legal claim for compensation. That essentially would mean the Government has to accept responsibility to provide compensation for any such proven injury or harm. Second, indemnity must not be construed as blanket protection for deliberate acts, fraud or instances of negligence. Third, if foreign vaccine manufacturers are granted indemnity, then manufacturers of the vaccines currently in use are likely to demand

similar protections.

Though at a broader level, the stand and unwillingness of these manufacturers to supply COVID-19 vaccines to any country unless granted indemnity is too rigid. However, beyond indemnity, India does have mechanisms in the current legal framework to ensure safety and legal remedy for any harm. First, the Drugs Controller General of India while granting registration certificates is empowered to take action against companies found to be in violation of the Drugs and Cosmetics Act, 1940. Second, any individual seeking compensation after experiencing AEFI may directly file petitions before consumer courts and the High Courts. Third, recent amendments to the Consumer Protection Act, 1986 disallow individuals but permit the regulatory bodies to initiate class action suits (cases representing groups of people who have suffered from the same loss) based on individual complaints.

Opportunity in the crisis

Requests for indemnity must be contextualised within the larger public interest. For citizens, as long as mechanisms to tackle and compensate for a potential harm are effective, it makes a marginal difference if they come from the Government or a manufacturer. Moreover, even in cases where manufacturers hold legal liability, the Government and regulators cannot wash their hands of their responsibility to protect public health.

Therefore, India should examine safeguards instituted by countries which have granted indemnity to manufacturers, such as America's Countermeasures Injury Compensation Program (CICP) and similar schemes in the U.K., Canada, the European Union, and Singapore. The COVAX has underwritten the compensation burden to protect vaccine manufac-

turers and distributors.

This discourse clearly needs a recalibration and provides the Indian government a valuable opportunity to institutionalise legal safeguards from vaccine injuries and possibly, at a larger level, improve overall patient and health-care safety in the country. Such institutional mechanisms need to be supplemented with dedicated funding from the Government. Such systems can then be applicable to any licensed vaccines in India.

One of the characteristics of India's response to the COVID-19 pandemic has been delaying decisions till a point of crisis has emerged. Situations such as the novel coronavirus pandemic demand proactive and decisive problem-solving instead of burying our heads in the sand, hoping the problem will disappear. However, the debate on indemnity has far-reaching consequences. It must be seen as an opportunity far beyond the quantum of vaccines, to review legal provisions and create long-term mechanisms for protection from vaccine harm and making health services safer and accountable. It is a high time that a decision on granting (or not) indemnity to COVID-19 vaccines manufacturers is taken, before the situation morphs into another crisis and then a decision is rushed. The approach has to be to safeguard the interest of the citizen and convert this as an opportunity to reduce vaccine 'licensing to availability gap', increase vaccine availability, and establish institutional mechanisms.

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LETTERS TO THE EDITOR

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Crime in Mysuru

The Mysuru gang rape case is disturbing. (Page 1, "5 held in Mysuru gang rape case", August, 29). But making it even worse have been the uncharitable remarks made by politicians and others, casting aspersions on the survivor-student for the abominable incident. It has become the practice for people in authority to make crass remarks, conveniently forgetting the unquantifiable trauma and agony the survivors undergo. This only shows a retrograde mindset and lack of empathy for the distraught women. Assaults on women only show the law enforcement agency in a bad light; but it is also a blot on the entire society. Finally, it is only intensive

foot patrolling and a visible police presence in crime-prone areas round the clock and exemplary punishments for the perpetrators through fast track courts that can make a very visible difference.

V. JOHAN DHANAKUMAR, Chennai

India has been an unfriendly nation for women in general, with no signs of crimes against them abating. An atrocity almost similar to the 2012 Nirbhaya case has been perpetuated in Mysuru, a city known for its safety and civility. The perpetrators of the ghastly crime need to face quick justice; it is only such a step that will instil confidence in all. The current laws do not seem to be proving to be a deterrent. This is also no occasion to make and exchange

insensitive remarks or comments.

H.N. RAMAKRISHNA, Bengaluru

This is one more example of the growing violence against women in the country. Only a fraction of women who are assaulted, file complaints, and most survivors prefer to remain silent because of the social stigma. India is a deeply patriarchal society and it is no exaggeration to say that popular culture encourages young men to harass women. The relevant laws need to be revisited as there has been no reduction in the wave of crimes against women.

R. SIVAKUMAR, Chennai

Selection of judges

In the long list of appointees to the Supreme Court of

India, what stands out is the omission of Justice Akil Kureshi. The reasons are not far to see. The appointments were kept in the backburner for almost two years and popped up no sooner than star performer Justice Rohinton Fali Nariman retired and was out of the collegium.

It is one of the lamentable follies of the Collegium and its consequent fallout on the independence of the judiciary. The striking down of the National Judicial Appointments Commission (NJAC) which wanted to include other constitutional functionaries in the appointment of judges, has really made no difference. Earlier it was the case of supersession of Justice H.R. Khanna for the post of the Chief Justice of India after he delivered his historic dissent

in *ADM Jabalpur*. Now, it is the unfortunate omission of Justice Kureshi at the threshold itself.

No person can be made to suffer for his boldness and fairness as it is the most cherished value of the judicial system and its very bedrock. We may still have some Justice Khannas and Justice Kureshis left, but that is no consolation. We need a fearless judiciary.

N.G.R. PRASAD, Chennai

Pension regulations

I am a disability activist suffering from multiple sclerosis for the last 23 years. I had to take premature retirement from bank service due to total incapacitation after completion of 30 years of service.

My physical condition is such that I have not been able to

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visit a bank branch as I have been denied a notional benefit of five years in pensionary benefits; this may well be the condition of many others like me. Recently, the family pension of bank employees was enhanced from 15% to 30% and I sent a representation to the Finance Minister requesting intervention in a matter pending since 1996 when the Disabilities Act was first passed.

What needs to be highlighted is the anomaly in Section 30 of the bank pension regulations regarding denial of notional benefit of five years in the pensionary benefits of those who have taken premature retirement due to total incapacitation.

YASH PAL RALHAN, Jalandhar, Punjab